

MF 01-20  
Tax Type: Motor Fuel Use Tax  
Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	)	
	)	Docket No. 01-ST-0000
v.	)	
ABC, INC.	)	Claim for Credit or Refund
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Jim Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe for ABC, Inc.

Synopsis:

The Department of Revenue ("Department") issued a letter denying a portion of a claim for a motor fuel tax refund filed by ABC, Inc. ("taxpayer"). The claim requested a refund of taxes paid on undyed diesel fuel used for off-highway purposes for the period of January 2000 to November 2000. The taxpayer timely protested the Department's denial of the claim. The taxpayer waived its right to an evidentiary hearing and requested that this matter be decided based on written submissions by the parties. The sole issue presented is whether the taxpayer's loader is the type of vehicle for which a claim for refund may be allowed. After reviewing the documentation presented, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer filed a claim for a refund of tax paid on undyed diesel fuel for the period of January 2000 to November 2000. (Joint Ex. #1)
2. The taxpayer's claim included 330.02 gallons of undyed diesel fuel that was used in a 1995 Dresser Loader. (Stipulation #2)

3. On February 23, 2001, the Department issued a letter to the taxpayer that denied the portion of the taxpayer's claim that was based upon the use of the 330.02 gallons of fuel in the Dresser Loader. (Stipulation #3; Join Ex. #2)

CONCLUSIONS OF LAW:

Section 13 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), provides in part as follows:

“Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid. \*\*\*

No claim based upon the use of undyed diesel fuel shall be allowed except for undyed diesel fuel used by a commercial vehicle, as that term is defined in Section 1-111.8 of the Illinois Vehicle Code, for any purpose other than operating the commercial vehicle upon the public highways and unlicensed commercial vehicles operating on private property.” (35 ILCS 505/13)

Section 1-111.8 of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*) provides the following definition of commercial vehicle:

“Any vehicle operated for the transportation of persons or property in the furtherance of any commercial or industrial enterprise, For-Hire or Not-For-Hire, but not including a commuter van, a vehicle used in a ridesharing arrangement when being used for that purpose, or a recreational vehicle not being used commercially.” (625 ILCS 5/1-111.8)

The Vehicle Code also provides the following definition of vehicle:

“Every device, in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power, devices used exclusively upon stationary rails or tracks and snowmobiles \* \* \*.” (625 ILCS 5/1-217)

The provision in section 13 that limits claims for undyed diesel fuel was added to the Act effective January 1, 2000.

The Act states that no claim based upon the use of undyed diesel fuel shall be allowed except for fuel used by a commercial vehicle. Even though the taxpayer's loader was used off-highway, the statute clearly states that the undyed fuel must be used in a commercial vehicle before the claim can be allowed. Although the loader at first glance may appear to fit within the definition of commercial vehicle because it is generally used to transport property from one place to another, the term “vehicle” under the Vehicle Code is defined as a device by which property “is or may be transported or drawn upon a highway.” 625 ILCS 5/1-217. Loaders are not used to transport property on highways and are therefore not commercial

vehicles. The portion of the taxpayer's claim that is based on undyed fuel used in a loader must therefore be denied.

The taxpayer argues that it did not receive any notice concerning the change in the law that became effective on January 1, 2000, even though the Department claims that it sent notice to all the companies that had filed for refunds in the past. The taxpayer also states that it has only one bulk fuel tank, which contains undyed fuel, and that fuel is used in the taxpayer's mixer trucks. The taxpayer claims that it is cost-prohibitive to add a second fuel tank solely for providing dyed fuel for the loader. The loader is used only on the taxpayer's premises, and the taxpayer states that it would be difficult and burdensome for the taxpayer to transport the loader to a dyed fuel retailer when it needed to be refueled. The loader's tank capacity is more than 70 gallons, and it would be impractical to fuel the loader from a small container, such as a gas can.

The taxpayer's circumstances are problematic but are not a basis for granting the claim. The taxpayer may have been unaware of the change in the law, but the newly enacted provisions must still be followed. As unfortunate as the taxpayer's situation may be, the current provision of the law does not allow a claim for refund of taxes paid on undyed diesel fuel used in a loader.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's claim for a credit or refund be denied.

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Linda Olivero  
Administrative Law Judge

Enter: July 30, 2001